

### REMARKS

Claims 1-13 are pending in the present application.

The examiner requires amending the title so it is more descriptive. While the patent literature is replete with examples of titles of issued patents having no more descriptive titles than that of the originally filed specification, the applicants have changed the title to further prosecution.

With regard to the trademarks issued raised by the examiner, the applicants have made a good faith effort to respect each and every trademark found in the specification. In response to the examiner, the specification was reviewed and a couple amendments made. If there are other omissions, the applicants respectfully request that the examiner specifically point them out.

Claims 1, 3, 4, 6 and 11-13 have been rejected under 35 USC §112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

By the amendments presented, Claim 1, 3, 4, 6, 11, 12, 13 are rewritten to meet the requirements under 35 USC § 112 and 35 USC §101. No new matter has been added by these amendments and no additional claims fee is due as a result of these amendments.

#### **Art-related Rejections**

Claims 1-13 have been rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a) as obvious over WO 94/03150 (herein referred to as WO '150).

The applicants assert that the amended claims are not anticipated or made obvious by the cited reference. The applicants present with traversal the following remarks relating to the above rejection:

The WO '150 application, titled "Washing Composition" are specific to compositions formulated to be rinsed or washed off the skin. On page 2, lines 10-16, WO '150 states that the invention addresses the anti-foaming problems associated with washing compositions of the prior art including suppression of foam by oil and certain non-ionic surfactants due to their poor foaming properties. The compositions as disclosed in '150, therefore, significantly differ from the leave-on compositions of the present invention in terms the selected components and their levels. The amendment to pending claim illustrates such difference. The amendment limits the C<sub>10</sub> to C<sub>16</sub> mono, -di and -tri acyl sugar esters surfactants to levels from 0.01% to 1.0%. This is significantly different than the sugar-based surfactants taught in '150, wherein the sugar-based surfactants have shorter alkyl chains for enhancing foaming that is critical in a successful wash-off composition, but detrimental in a leave-on skin composition. This significant difference makes the amended claim unanticipated by this reference.

In terms of obviousness, this amendment clearly demonstrates that the teaching provided by '150 is in opposite of that of the presently claimed invention. On the basis of '150 an artisan would not so limit the present claims in terms of the sugar esters, unless of course that foaming was to be minimized rather than maximized. Making such an amendment is unobvious on the basis of this reference.

#### CONCLUSION

Applicants have made an earnest effort to place their application in proper form and to distinguish their invention from the applied prior art. WHEREFORE, Applicants respectfully request the reconsideration of this application, entry of the amendments presented, withdrawal of the rejections under 35 U.S.C. §112, §102 and §103, withdrawal of the double patenting rejection, and allowance of Claims 1-13.

Respectfully submitted,

By 

John M. Howell

Attorney for Applicants

Registration No. 33,713

Tele. No.: (513) 626-3792

October 23, 2002

Customer No. 27752

**MARKED VERSION SHOWING CHANGES MADE**

**Claim 1. (amended)**

A leave-on cosmetic composition suitable for topical application to the skin comprising:

- a) from about 6% to [from] about 20% of a polyhydric alcohol[, or mixtures thereof];  
and
- b) a cation containing polymer selected from the group consisting of cationic, basic, amphoteric and zwitterionic polymers[, or] and mixtures thereof;

wherein said composition comprises less than 4% of an anionic, zwitterionic or amphoteric surfactant and from about 0.01% to about 1.0% of C<sub>10</sub> to C<sub>16</sub> mono-, -di and -tri acyl sugar esters.

**Claim 3. (amended)**

A composition according to Claim 2 wherein the polyhydric alcohol is selected from the group consisting of glycerine, butylenc glycol, propylene glycol, dipropylene glycol, polyethylene glycol [and derivatives thereof], hexane triol, ethoxylated glycerine, [and] propoxylated glycerine [, or] and mixtures thereof.

**Claim 4. (amended)**

A composition according to Claim 3 wherein the polyhydric alcohol is selected from the group consisting of glycerine; polyethylene glycol and [derivatives thereof, or] mixtures thereof.

**Claim 6. (amended)**

A composition according to Claim 5 wherein the cationic polymer is a cationic polysaccharide [or derivatives thereof] selected from the group consisting of cationic cellulosic [derivatives] polymers, [and] cationic polysaccharide gums [derivatives, or] and mixtures thereof.

**Claim 11. (amended)**

A cosmetic method for moisturizing [of treatment of the] skin comprising the step of applying to the skin a composition according to Claim 10.

**Claim 12 (amended)**

The cosmetic method of claim 11 wherein the composition comprises a [Use of a] cation containing polymer selected from the group consisting of cationic, basic, amphoteric and zwitterionic polymers, and [or] mixtures thereof[, for reducing tack in a skin care composition comprising from about 6% to from about 20% of a polyhydric alcohol, or mixtures thereof].

Claim 13 (amended)

The cosmetic method of claim 13 [Use of a composition comprising from about 6% to from about 20% of a polyhydric alcohol, or mixtures thereof; and a cation containing polymer selected from cationic, basic, amphoteric and zwitterionic polymers, or mixtures thereof] wherein said composition is left on the skin [for a leave-on skin care application].